

### REMARKS

The Examiner's action of January 6, 2004 is noted in which the claims are finally rejected under 35 USC §§103 over Smith in view of Fargano. Applicants have amended Claim 25 and have canceled Claims 43 and 44 without prejudice.

Applicants claim an adaptive system for sending out guided practice activities which have been altered in response to reported behaviors of an individual who has received an initial guided practice activity. See Specification Page 5, lines 1-3.

Note that the content pushed to the individual is a scenario-based assessment consisting of a situation related to the initial guided practice activity which can be responded to by indicating what behavior the individual would use in the situation, thus to indicate effective or non-effective behavior. What is reported back as the individual's response is the behavior the individual reports would be used in the situation provided in the pushed content.

Nowhere is this shown or taught in either Smith or Fargano.

### The Fargano Reference

By way of background, first and foremost Fargano is a testing process. The Hall et al. system is first and foremost a teaching process. In Fargano, there is no information transmitted to the individual on how to modify his performance. In Fargano there is no mechanism to loop back to change a question. In Fargano there is no mention of remediation.

Thus, Fargano does not teach; he tests.

The Fargano process is a "linear" system, meaning there is a canned set of questions offered in a predetermined sequence. The Hall et al. system is a true teaching process which loops back to change the behavioral scenarios pushed to the individual to promote learning.

More particularly, it is Applicants' contention that the Fargano patent describes a knowledge-based test that consists of randomly timed test questions that must be answered quickly in order to ensure that the learner's answers are their own and they have not received help.

Secondly, the Fargano system cannot be used to deliver the learning process described by Hall et al. because the Hall system has antithetical requirements. Most importantly, the Hall system requires delivery of guided practice activities that arrive at known times.

Thirdly, the Fargano system has no capacity to handle guided practice activities. Guided practices are not questions with right or wrong answers. Guided practices present the learner with scenarios to which the learner is to react.

Fourthly, the Fargano system has no capacity to allow the learner to control timing by specifying the known time at which the individual is to receive a guided practice activity.

Fifthly, Fargano does not and cannot assess guided practice activity. This is because simply pushing multiple choice questions that can be graded in no way involves guided practice activity.

Sixthly, Applicants contend that the Hall et al. storage, timing, and delivery of guided practice activities cannot be performed by Fargano's system. This is because his patent describes a process that requires a database and workflow process that consists of test questions catalogued by complexity and delivered sequentially with no ability to loop back to give a learner a different guided practice activity.

Seventhly, the timing of Fargano's questions is solely controlled by the random timing established at the database, not at known times.

Clearly, the database and workflow designed to support Fargano could not be used by Hall's system to store, time and deliver multi-layered, iterative, guided practice activities specifically timed by the learner.

Further, to the extent that there is any adaptive process in Fargano, it does not adapt guided practice activities.

As mentioned above, there is not one hint of remediation in Fargano. Certainly there is no showing of Hall's adaptive process of identifying scenario-based behavioral responses and subsequently delivering adaptive learning that is iterative and spiraled (i.e. can loop back to review lessons and practice) - a process that is the definition of remediation.

The following Comparison Chart is useful in discerning the differences.

<b>Fargano</b>	<b>Hall</b>
Knowledge	Behavior
Linear, cumulative, no remediation	Spiraled, iterative, opportunities for remediation
Test questions only – no lesson component	Guided Practices
Challenges (test questions)	Guided Practice Activities (behavioral practices)
Strictly Timed	No timing
Right – Wrong	No right or wrong – Practice to gain mastery
No help or input	2-way links through the database connection, encourages interaction
Timing designed to surprise and challenge – chosen by database	Timing designed to support and be convenient – chosen by learner
Plurality of Telephony devices - to include spoken voice messages (i.e. non-IP delivery)	Internet Protocol only – use of telephony devices secondary to our exclusive use of IP

In short, the Fargano method cannot deliver the Hall et al. system. The Fargano system will not work for the Hall et al. system because it cannot handle guided practice content. This is because the content and database required to deliver Fargano's learning process is different

from that required for the Hall et al. system and is completely incompatible with Hall et al.'s process.<sup>1</sup>

Note that the Hall et al. learning process has been through a year-long Beta test demonstrating that 100% of learners received and were able to practice behaviors using this process and it is currently being used by thousands of learners, indicating substantial commercial success.

#### The Smith Patent

As to the Smith patent, Smith elicits answers to a questionnaire, enters them into his matrix, generates a score, and pushes "training and development reminders" based on the score.

There is no adaptive feature to Smith and there is no two-way communication between the learner and Smith's database. There is no altering of Smith's training and development reminders based on responses from an individual. Smith simply believes in his initial assessment and relies on repetitive training and reminders which are unaltered. These reminders are not adaptive. Nor is there any mechanism in Smith to achieve adaptability even if Smith wanted it.

#### The Combination of Smith and Fargano

As noted above, the Fargano system is a testing system which tests one's knowledge. It is not a teaching system. Specifically, Fargano does not generate guided practice activities.

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<sup>1</sup> The Hall et al. system describes a behavioral-based process that consists of guided practice activities that encourage the learner to interact with others and practice behaviors over time. All guided practice activities are delivered on a schedule selected by the learner and the process will wait for learners who are on vacation or experiencing a heavy work-load. There is no requirement to perform guided practice activities in a specific time frame. Guided Practice Activities are re-introduced throughout the process and the individual is instructed to review previously practiced activities to reinforce the mastery of complete behaviors. At intervals, learners receive a scenario-based assessment asking them what they would do in various behavioral situations. Based on the behavior reported back, guided practice is adaptively sent to enhance the practice of effective behavior.

Note that Fargano provides a question and demands that it be answered within a very short period of time. The Fargano system is thus for knowledge testing and for no other purpose.

It is Applicants' contention that it would not be appropriate to combine a knowledge based system (Fargano) with a non-knowledge based system (Smith). Moreover, as will be seen below, the combined references do not teach the claimed subject matter. Reconsideration of this ground of rejection is therefore requested.

More particularly, the Examiner points out what is not shown in Smith and Applicants agree. However, the Examiner asserts these deficiencies are supplied by Fargano. Applicants do not agree.

It is Applicants' position that, contrary to what the Examiner is asserting, Fargano does not specifically teach having the individual transmit back to the Internet site responses to an initial guided practice since there is no guided practice in the Fargano patent.

The Fargano patent does not specifically teach transmitting a remediative guided practice back to an individual, since there is no teaching of remediation, just testing.

The Fargano patent does not specifically teach transmitting anything to an individual at times selectable by the individual, since transmissions are made to surprise the individual.

In short, Fargano is not at all interested in guided practice, but only the tabulation of "correct" answers to factual questions.

It can thus be seen that the combination of Smith and Fargano does not meet the claimed subject matter. Nowhere in either reference is taught the production of adaptive guided practice activities. Neither reference teaches utilizing information from a learner to adapt any guided practice activity.

Nor would it be obvious to combine a knowledge based system with a non-knowledge based system. This is because the Fargano system will not support the non-knowledge based guided practice system claimed.

#### Conclusion

In summary, as to Smith, once one gives initial information, there is no guided practice activity which is altered based on the results of an initial guided practice activity. Smith merely regurgitates canned training and development reminders. Fargano adds nothing to Smith because he does not deal with guided practice activities, teaching or remediation.

In view of the above Amendment, it is abundantly clear that the references cited by the Examiner do not singly or in combination anticipate the claimed subject matter. Since the references when combined fail to teach the claimed subject matter, it is impossible that the claimed subject matter is obvious.

Note that no new matter is added and no additional search is necessary as the subject matter has already been thoroughly searched.

Since this amendment places the case in condition for allowance, allowance of the claims and issuance of the case is therefore earnestly solicited.

Alternatively, entry of this Amendment for purposes of Appeal is requested.

Respectfully submitted,

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